

California Regional Water Quality Control Board
Santa Ana Region

July 20, 2001

ITEM: 15

SUBJECT: Administrative Civil Liability Complaint No. 01-72, O. C. Alphanetics, Inc., Santa Ana, Orange County

BACKGROUND

On June 22, 2001, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. 01-72 (copy attached) to O. C. Alphanetics, Inc. (O.C. Alphanetics), for alleged violations of State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$20,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against O.C. Alphanetics.

ACL No. 01-72 was issued by the Executive Officer to O.C. Alphanetics for failing to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and Monitoring and Reporting Requirements; for discharging unauthorized, non-storm water containing pollutants; for discharging pollutants in storm water to the storm drain system; and for failing to report discharges in violation of the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$250), with the State Water Resources Control Board. O.C. Alphanetics filed an NOI and obtained coverage under the General Permit on March 30, 1992, WDID No. 8 30S003767. The facility is located at 2102 West Chestnut Avenue in the City of Santa Ana.

On March 28, 2001, a routine compliance inspection was conducted at the O.C. Alphanetics facility. It was apparent that an un-authorized, non-storm water discharge had taken place earlier that day (residual puddles in the driveway leading to Chestnut Avenue). When the facility SWPPP was requested for review, site personnel were unable to locate the plan. Site personnel stated that weekly inspections were conducted of the facility and that records had been kept of those inspections. However, the last inspection

recorded in the documentation given to staff had been made in 2000. During staff's inspection of the facility, numerous instances of inadequate or non-implemented BMPs were noted. These included leaking wastewater filters, improperly stored and/or unidentified drums of materials, residual oil and chemical stains throughout the facility, heavy etching of concrete storm swales (indicating past discharges of acidic or caustic materials), and compromised secondary containments. Past annual reports have indicated that O.C. Alphanetics relies primarily on secondary containment to prevent the discharge of pollutants from their facility. However, several holes had been 'punched' into the facility's perimeter wall and pipes had been installed through the asphalt berms located in the etchant and chemical storage areas at the rear of the facility. These holes and pipes had rendered the primary BMPs at the facility useless, thereby allowing the discharge of unauthorized, non-storm water and storm water containing pollutants from the facility to waters of the United States.

Site personnel were advised that the facility SWPPP must be kept at the site and that it must identify adequate BMPs that are to be implemented to reduce/eliminate pollutant loads in storm water discharges; that the holes and pipes that compromised the secondary containment must be repaired; and that unauthorized, non-storm water discharges were strictly prohibited and must cease immediately.

On March 29, 2001, staff conducted a second inspection. Prior to entering the facility, it was noted by staff that the etchant and chemical storage areas at the rear of the facility had been washed down and that the wash down water, an unauthorized, non-storm water discharge, had flowed into the public right-of-way behind the facility and after flowing through a residential area and commingling with other non-storm water flows, had entered the local storm drain system. Samples of the discharge were collected just outside the facility gates and were submitted for analysis. Further, samples of solids which had crystallized out in the exterior cracks of the facility's perimeter block walls were collected and analyzed. During this inspection, staff met with the company president, Mr. Lopez, who was still unable to provide the facility SWPPP for review. Once again, staff expressed concern regarding the unauthorized, non-storm water discharges and Mr. Lopez was told that samples had been taken of the discharges to the alley. Mr. Lopez indicated that they had washed out the yard in anticipation of cementing in the holes in the perimeter wall and the pipes in the asphalt berms. Staff also noted that as a result of the wash down, the pipes were half-filled with sediment and debris. Mr. Lopez further indicated that the facility had been thoroughly cleaned prior to the morning's wash down. Staff again reminded him that wash downs were considered unauthorized, non-storm water discharges and were strictly prohibited by the General Permit. Mr. Lopez was then told that any future enforcement action for these violations would be partially contingent on the pollutant loads of the March 29, 2001 discharge.

On April 10, 2001, a Notice of Violation was issued to O.C. Alphanetics outlining the findings of the two inspections and indicating that further enforcement actions were pending based on the analytical results of the March 29, 2001 samples. On April 18, 2001, staff received the analytical results of the samples taken March 29, 2001. Both

water samples taken from the alley, adjacent to the etchant and chemical storage areas, had elevated metal concentrations, particularly copper and lead.

SITE HISTORY

O.C. Alphanetics has had several written notices issued to them by Regional Board staff for non-timely submittal of annual reports required by the General Permit. Following a Notice of Violation, the 1992-3 annual report was submitted without sampling results. That annual report certified that a SWPPP had been prepared and that the facility was "... surrounded by a berm which prevents spills and discharges." No annual reports were filed for 1993-4 or 1994-5 and a staff enforcement letter was written on November 11, 1996, requiring compliance with the general permit.

The 1995-6 annual report again did not include any sampling events, but did certify that the facility had a SWPPP that had been prepared, was fully implemented and was effectively reducing pollutants in storm water and that the facility had no non-storm water discharges.

The 1997-8 annual report was submitted only after a Notice of Violation was issued to O.C. Alphanetics. While the laboratory analyses conducted for the two storm events were incomplete (pH and specific conductance were not analyzed for the first storm and specific conductance and oil & grease were not analyzed for the second storm), the annual report did include total metals analyses for the three discharge points. For the storms sampled during the 1997-8 storm season, storm water runoff from the O.C. Alphanetics facility had elevated concentrations of copper, zinc and lead.

No further metals analyses were conducted on samples collected during the 1998-9 or 1999-2000 sampling events, despite a requirement in the General Permit that facilities analyze for "... other pollutants which are likely to be present in storm water discharges in significant quantities."

Finally, O.C. Alphanetics certified in the annual reports for 1997-8, 1998-9 and 1999-2000 that neither authorized nor unauthorized non-storm water discharges occurred, that the SWPPP had been reviewed and was found to be in compliance with the General Permit, and that BMPs at the site were adequate to reduce/prevent the discharge of pollutants in storm water.

VIOLATIONS

By failing to properly develop and implement an effective SWPPP and monitoring and reporting requirements, discharging unauthorized, non-storm water and discharging pollutants to the storm drain system, O.C. Alphanetics violated Provisions A.1, A.2, B.3 and C.1 of the General Permit. Pursuant to Water Code Section 13385 (a) (2), civil liability may be imposed for the preceding violations.

Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The Executive Officer issued ACL No. 01-72 because of these repeated violations of the General Permit. The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to develop and implement a SWPPP to control the discharge of pollutants in storm water runoff. In the annual reports, the discharger certified that a fully effective SWPPP had been developed and that the BMPs identified in the SWPPP had been implemented and were effective in reducing/eliminating pollutants in runoff. Staff's inspections found that no SWPPP was available at the site and BMPs were inadequate.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

During prior years, staff issued a number of staff enforcement letters/Notices of Violations to O.C. Alphanetics for non-submittal of annual reports. On March 28, 2001 facility personnel were advised that the unauthorized, non-storm water discharges must cease, but discharges recurred on March 29, 2001.

4. Degree of Culpability

The storm water regulations are applicable to all industrial activities. All dischargers, including O.C. Alphanetics, are responsible for compliance with the Clean Water Act. O.C. Alphanetics is fully culpable for violating the terms and conditions of the General Permit, which implements the Clean Water Act.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to develop an effective SWPPP and by failing to implement effective BMPs, O.C. Alphanetics gained an economic advantage over their competitors. Board staff estimated that O.C. Alphanetics saved approximately \$8,000 as a result of the violations.

STATEWIDE ENFORCEMENT POLICY

On April 18, 1996, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are

consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$20,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on June 22, 2001.

[Click here to view the full text of ACL 01-72](#)